



2026:KER:36125

C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

MONDAY, THE 25<sup>TH</sup> DAY OF MAY 2026 / 4TH JYAISHTA, 1948

FAO (RO) NO. 13 OF 2025

AGAINST THE DECREE AND JUDGMENT IN AS 87/2018 OF ADDITIONAL  
DISTRICT COURT - IV, KOTTAYAM

-----

APPELLANT/RESPONDENT/PLAINTIFF:

K.N. SUKUMARAN NAIR,  
AGED 83 YEARS,  
S/O C.K. KRISHNAN NAIR, KAKKATTU RAMAVILASAM BUNGLAW,  
PANACHIKAVU P.O., CHANGANACHERRY VILLAGE,  
CHANGANACHERRY TALUK, PIN - 686101.

BY ADVS.  
SRI.SANIL JOSE  
SRI.BONNY BENNY  
SRI.P.G.SUDHEESH  
SRI.K.P.ANTONY BINU  
SHRI.AMALJITH

RESPONDENT/APPELLANT/1ST DEFENDANT:

K.E. PARAMESWARA PILLAI  
AGED 80 YEARS  
S/O VELAYUDHA PANICKER, KOIKKAL THANCHALIL HOUSE,  
PERUNNA WEST MURI, CHANGANACHERRY VILLAGE,  
CHANGANACHERRY TALUK, NOW RESIDING AT T.C.11/1415(3),  
CLIFF HOUSE ROAD, NANDANCODE, THIRUVANANTHAPURAM,  
PIN - 695003

BY ADV SRI.RAJEEV V.KURUP

THIS FIRST APPEAL FROM ORDER - REMAND ORDER HAVING COME UP  
FOR ADMISSION ON 25.05.2026, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:



2026:KER:36125

C. R.

SATHISH NINAN &  
P. KRISHNA KUMAR, JJ.  
= = = = =  
ICR [FAO (RO)] 5/2026 in  
FAO (RO) 13/2025 &  
FAO (RO) 13/2025  
= = = = =  
Dated this the 25<sup>th</sup> day of May, 2026

J U D G M E N T

Sathish Ninan, J.

In a suit for fixation of boundary, is it mandatory to incorporate in the schedule to the plaint the property of the defendant? While *Nandakumara Varama and Another. v. Usha Varma and Another* [2015 (1) KLJ 73] answered it in the affirmative, another learned single Judge in *Appukkuttan Nair v. Sadasivan Nair and Ors.* [2022 (7) KHC 250] held in the negative. The above conflicting views has led to this reference.

2. In *Nandakumara Varma (supra)* the Court held :-

*“In a suit for fixation of boundary it is not the boundary of the plaintiff alone that is fixed. It is the boundary between the property of the plaintiff and the defendant that is fixed. This necessitates description of the properties of both parties in separate schedules in the plaint and the plaintiff making a prayer for fixation of the boundaries between the properties. ....”*



-: 2 :-

In *Appukuttan Nair (supra)*, the above was held to be a casual observation. Order VII Rule 3 of the Code of Civil Procedure requires providing of the description of the property, where the subject matter is immovable property. It reads thus :-

*“3. Where the subject-matter of the suit is immovable property.—Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.”*

The dispute in a suit for fixation of boundary is with regard to the location of the boundaries separating the plaintiff's property with that of the defendant. Order VII Rule 3 states that necessary descriptions of the property sufficient to identify it, is to be provided in the plaint. When the plaintiff seeks to have the disputed boundary with that of the defendant fixed, while describing the plaintiff's property in the plaint, it would be sufficient to mention that the adjoining property of the disputed boundary is that of the defendant. Such description is sufficient to identify the disputed property. To resolve the dispute, measurement of the defendant's property would be necessary along with that of the plaintiff. However, such measurements would be



-: 3 :-

based on the title deeds of the respective parties or possession as the case may be. The plaintiff cannot be expected to know or be aware of the details of the property of the defendant including its extent and survey number. It would be imprudent to hold that when the boundary of the plaintiff's property is disputed by the defendant who is adjacent property owner, the plaintiff cannot file a suit for determination of the boundary of his property if he is unaware of the details of the property of the defendant. Therefore, it cannot be held that, the defendant's property, with which the boundary is sought to be fixed, needs to be scheduled to the plaint. It would be sufficient to indicate, while describing the plaintiff's property, the common boundary shared with the defendant. Such description satisfies the requirements of Order VII Rule 3 of the Code of Civil Procedure. We are in agreement with the views expressed in *Appukuttan Nair(supra)*.

3. In the light of the judgments in *Kallara Sukumaran v. Union of India & Ors. (1987 (1) KLT 226)*, *Babu Premarajan v. Superintendent Of Police, Kasaragode And Others (AIR 2000 Ker 417)* and *Rasheed v. Food Inspector (2016 (2) KHC 679)*, we cannot answer the reference and send the appeal to



-: 4 :-

be decided by the learned single Judge but are to adjudicate and dispose of the entire appeal itself.

4. Now we proceed to consider the merits of the appeal.

5. The suit is one for fixation of boundary and for prohibitory injunction against trespass. An extent of 36 cents of property belonged to the defendant and his brother Kumara Pillai(late) under Ext.A1 Partition Deed No.2601 of 1125 ME. Under Ext.A1, the eastern 18 cents was allotted to Kumara Pillai and the western 18 cents to the defendant. On the north-western side of the property allotted to the defendant, he constructed a two roomed shop building. In the year 1972, under Ext.A5 Sale Deed, the defendant conveyed the eastern shop room with the one cent upon which it is situated, to Kumara Pillai. Later, as per Ext.A2 Sale Deed of the year 1981, the legal heirs of Kumara Pillai conveyed the 18 cents allotted to Kumara Pillai under Ext.A1 partition, and also the shop room with the one cent of property obtained under Ext.A5, to the plaintiff. In the year 1988, the plaintiff sold the southern ten cents of property from out of the 18 cents which was obtained by his predecessor Kumara Pillai under Ext.A1 partition. Subsequently, under Ext.B2 sale



-: 5 :-

deed of the year 1989, the plaintiff conveyed 4 and  $\frac{1}{2}$  cents situated on the northern side of Ext.B1 property to the defendant. Claiming that after Exts.B1 and B2 conveyances the plaintiff is left with an extent of 5 cents, he seeks for its identification and fixation of boundary with the property of the defendant.

6. The trial court deputed an Advocate Commissioner along with a surveyor, to identify the property. The Commissioner filed Exts.C2 report and C2(a) plan. The suit was decreed accepting the report and plan. Challenging the decree the defendant preferred appeal. Exts.A5, B1 and B2 were produced by the parties only before the first appellate court and not before the trial court. The court set aside the judgment and decree of the trial court and remanded the suit back to the trial court for fresh identification of the property with reference to the said documents. The order of remand is under challenge in this appeal.

7. The learned counsel on either side were heard on the following substantial question of law :-

*“When the materials necessary for proper determination of the issues involved in the suit are available before the first appellate court, has there not being an erroneous exercise of jurisdiction in remanding the suit to the trial court ?”*



-: 6 :-

8. Admittedly, actual dispute between the parties is centered around a narrow strip of land marked as plot 'CHVDC' in Ext.C2(a) plan. The said plot lies in between the shop room conveyed by the defendant to the plaintiff's predecessor under Ext.A5 Sale Deed (on the west) and the admitted property of the plaintiff on the east. While the plaintiff claims that such plot forms part of the property conveyed under Ext.A5 Sale Deed, according to the defendant the said portion did not form the subject matter under Ext.A5 sale to Kumara Pillai, and that the said portion remained with him. From the 18 cents obtained by the plaintiff's predecessor under Ext.A1 partition, the plaintiff has alienated 14½ cents of property under Exts.B1 and B2. Ext.C2(a) plan indicates the following :-

(i) The property conveyed by the plaintiff under Exts.B1 and B2.

(ii) The admitted property of the defendant.

(iii) The shop rooms on the north-western portion of the defendants property.



-: 7 :-

(iv) The shop room conveyed by the defendant to Kumara Pillai, the plaintiff's predecessor.

(v) The small strip of land lying on the eastern side of the shop room conveyed to Kumara Pillai and on the western side of the property alienated by the defendant.

9. As noticed above, the dispute is centered around the plot identified in Sl.No.(v) above, that is, the strip of land (plot 'CHVDC') in between the admitted property of the plaintiff on the eastern side(alienated under Exts.B1 and B2), and his shop room covered under Ext.A5 Sale Deed. Though the appellant-plaintiff has a contention that the said plot forms part of the property allotted to his predecessor Karunakaran Pillai under Ext.A1 partition, even the commissioner has found otherwise. The commissioner has identified the said plot along with the shop room conveyed under Ext.A5 to have been obtained by the defendant under Ext.A1. However, as per the commissioner's report, the plot 'CHVDC' forms part of the defendants property covered under Ext.A5 Sale Deed. The issue is whether it is covered under Ext.A5 Sale Deed or not.



-: 8 :-

10. The schedule to Ext.A5 describes the eastern one room, out of the two roomed building, with the one cent upon which the said room is situated. Going by Ext.C2(a) plan the extent of property covered by the shop room of the plaintiff is 1.250 cents. If the disputed portion is also considered to be part of Ext.A5 sale then the total extent under Ext.A5 would be 1.550 cents.

11. According to the appellant, the remand by the first appellate court was unnecessary since the properties have been identified in the commissioner's report and plan. To establish Ext.A5 takes in the disputed plot also, the appellant relied on the recital of the eastern boundary in Ext.A5 as, the property of Karunakaran Pillai. The argument is that, if the disputed plot belonging to the defendant was retained with him, the eastern boundary in Ext.A5 would have been described as the property of the vendor (defendant). The fact that the eastern boundary was shown as Karunakaran Pillai's property reveals that the shop room along with the land extending up to Karunakaran Pillai's property on the east was conveyed under Ext.A5. This takes in the disputed



-: 9 :-

plot. Therefore, the claim of the defendant over the said plot is misconceived, is the contention of the appellant.

12. The learned counsel for the respondent-defendant would on the other hand point out that the disputed plot is situated in Survey Number 32 which is the same as the survey number of the admitted property of the defendant, whereas survey number of the property wherein the plaintiff's shop building is situated is survey number 33 and the survey number of the admitted property of the plaintiff situated on the eastern side is survey No.34. The plaintiff has never paid tax for the property in survey No.32 which includes the disputed property. The learned counsel for the respondent-defendant would further rely on the boundary descriptions in Exts.B1 and B2 documents, whereunder the plaintiff had sold the property on the eastern side to the additional second defendant. The recitals suggest that the 18 cents obtained by Kumara Pillai under Ext.A1 partition, and the one cent purchased by Kumara Pillai under Ext.A5, were treated as separate blocks and not as contiguous plot. In Exts.B1 and B2 the boundary described is that of the 18 cents and not of the 19



-: 10 :-

cents taken together. This indicates that the two items does not lie together, it is argued.

13. The respondent further argued that, Ext.B2 Sale Deed executed by the defendant to the additional second defendant, regarding northern portion of the 18 cents, mentions the western boundary as the property of the defendant and if the disputed portion was also covered under Ext.A5, the western boundary would have been described as the plaintiff's own property. Learned counsel for the respondent further drew our attention to the recital in Ext.B1 Sale Deed that, from out of the 18 cents allotted to Krishna Pillai while conveying ten cents on the south under Ext.A1, a 10 feet wide way was provided by the defendant, on the northern-eastern portion, for access to the south. As per Ext.B2, the extent of the said way is 1.440 cents. He also argued that Ext.B1 further reveals that only 16 cents was found available in the place of 18 cents, and that it is from the said extent that 1.440 cents was left out for the way. Referring to Ext.C2(a) plan he further pointed out that, an excess extent of 1.030 cents is remaining in the possession of the additional



-: 11 :-

second defendant, than that is conveyed under Exts.B1 and B2. Therefore, the claim of the plaintiff over the disputed portion is misconceived and lacks bona fides, it is argued.

14. On the above, we find that the materials on record would be sufficient enough to decide the lis between the parties. The Commissioner has identified the property. A further identification by measurement is not necessary. Though the commissioner has included the plot 'CHVDC' to be that of the plaintiff, the question as to whether it belongs to the plaintiff or to the defendant is to be decided based on the evidence on record including the recitals in the documents. If the Court finds that the said plot belongs to the plaintiff, then the plaintiff's property will be the one as identified as plot 'BEDVHCB' in the plan, with the line 'BEDV' as the boundary separating the property of the defendant. If the disputed plot is found to be that of the defendant, then the plaintiff's property will be as included in plot 'BEDCB'. Therefore, we find that the remand is unnecessary and that the first appellate court is to appreciate the evidence on record and decide the lis. Substantial

ICR [FAO (RO)] 5/2026 in  
FAO (RO) 13/2025 &  
FAO (RO) 13/2025



2026:KER:36125

-: 12 :-

question of law is answered accordingly.

In the result, the order of remand is set aside. The first appellate court shall re-hear the appeal and decide the same on its merits.

Parties to appear before the first appellate court on 23.06.2026.

Sd/-  
**SATHISH NINAN**  
JUDGE

Sd/-  
**P. KRISHNA KUMAR**  
JUDGE

kns/-

//True Copy//

P.S. To Judge